

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Lonnie Washburn,

Case No. 2:24-cv-383-CDS-BNW

5 Plaintiffs,

ORDER

6 v.

7 Mesquite Gaming LLC,

8 Defendant.
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11 Before the Court is Defendant's Motion to Stay Discovery. ECF No. 43. Plaintiff
12 responded and Defendant replied. ECF Nos. 44 and 45.¹ As explained in more detail below, the
13 Court grants Defendant's motion.

14 **I. Background**

15 Plaintiff alleges that in June 2023 he was discriminated against during his stay at a hotel
16 owned by Defendant. As a result, he brings several claims based on the American with
17 Disabilities Act and related Nevada statutes.

18 Defendant moves to stay discovery pending the resolution of its motion to dismiss by
19 relying on the "preliminary peek test" for its argument. Defendant argues that the pending motion
20 is dispositive and that it can be decided without additional discovery. It also makes passing
21 references to arguments contained in its motion to dismiss to support its belief that the case will
22 not move forward. Specifically, it argues Plaintiff has not demonstrated standing to bring these
23 claims and that he has not sufficiently alleged facts upon which relief can be granted.

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¹ The Court realizes that it misunderstood the Defendant's status report at ECF No. 37 and that the Minute
28 Order at ECF No. 38 directing the parties to file a stipulation regarding a stay of discovery was in error.
This issue has been rendered moot given the instant motion.

1 Plaintiff does not contest that the pending motion to dismiss is potentially dispositive or
2 that it can be decided without additional discovery. Nor does he address the “preliminary peak”
3 test. But, as relevant here, Plaintiff argues that Defendant has not met its burden under Rule 26(c)
4 to stay discovery.

5 Defendant’s reply relies on many of the same arguments contained in its moving papers.

6 **II. Legal Standard**

7 Courts have broad discretionary power to control discovery. *See Little v. City of Seattle*,
8 863 F.2d 681, 685 (9th Cir. 1988). When deciding whether to grant a stay of discovery, the court
9 is guided by the objectives of Federal Rule of Civil Procedure 1, which ensures a “just, speedy,
10 and inexpensive determination of every action.” *Kor Media Group, LLC v. Green*, 294 F.R.D.
11 579, 581 (D. Nev. 2013). Accordingly, considerations of judicial economy and preserving the
12 parties’ resources may warrant a stay in some cases. *U.S. for Use & Benefit of Newton v.*
13 *Neumann Caribbean Int’l, Ltd.*, 750 F.2d 1422, 1426-27 (9th Cir. 1985).

14 The Federal Rules of Civil Procedure do not, however, provide for automatic or blanket
15 stays of discovery just because a potentially dispositive motion is pending. *See Skellerup Indus.*
16 *Ltd. v. City of L.A.*, 163 F.R.D. 598, 600-01 (C.D. Cal. 1995). However, when a party moves for a
17 stay because a dispositive motion is pending, the court may grant the stay when “(1) the pending
18 motion is potentially dispositive; (2) the potentially dispositive motion can be decided without
19 additional discovery; and (3) the court has taken a ‘preliminary peek’ at the merits of the
20 potentially dispositive motion and is convinced that the plaintiff will be unable to state a claim for
21 relief.” *Kor Media Group*, 294 F.R.D. at 581.

22 **III. Analysis**

23 Here, the Court agrees with Defendant that the pending motion to dismiss is potentially
24 dispositive and that no discovery is needed to resolve it. Moreover, Plaintiff does not contest
25 either proposition.

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1 While the Court has previously found that the preliminary peek test can be problematic,
2 the issues presented here are simple enough that the test can be easily applied. *See Schrader v.*
3 *Wynn Las Vegas, LLC*, 2021 WL 4810324 (D. Nev. Oct. 14, 2021). The court has reviewed the
4 First Amended Complaint and taken a preliminary peek at the merits of the motion to dismiss and
5 is convinced Plaintiff's First Amended Complaint suffers from several deficiencies. As a result,
6 the Court believes he has not asserted claims upon which relief can be granted.

7 First, Title III of the ADA states that "[n]o individual shall be discriminated against on the
8 basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,
9 advantages, or accommodations of any place of public accommodation by any person who owns,
10 leases (or leases to), or operates a place of public accommodation." 42 U.S.C. § 12182(a). In
11 addition, as it relates to service animals, discrimination is defined in part as "a failure to make
12 reasonable modifications in policies, practices, or procedures, when such modifications are
13 necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to
14 individuals with disabilities" 42 U.S.C. § 12182(b)(2)(A)(ii) (2009). But Plaintiff's First
15 Amended Complaint does not contain facts to allege he is disabled.

16 In addition, there are also problems with claims under Nevada state law. For example,
17 claims under NRS §§ 651.070 and 651.075 also require an allegation as to disability. And
18 Nevada's criminal statutes do not generally create a private right of action.

19 In short, there are factual allegations that are currently missing from the First Amended
20 Complaint that are needed to establish the different elements for the alleged claims. The district
21 judge will decide the dispositive motion and may have a different view as to its merits. This
22 court's "preliminary peek" at the merits of the underlying motion is not intended to prejudge its
23 outcome. Rather, this court's role is to evaluate the propriety of an order staying or limiting
24 discovery *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597 (D. Nev. 2011).

25 In addition, the court finds that staying the discovery in this case will further the goals
26 enunciated in Federal Rule of Civil Procedure 1 as it would be more just to stay discovery while
27 the issues in the pending motion are resolved.

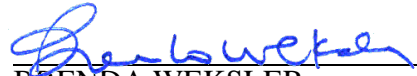
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1 **IV. Conclusion**

2 **IT IS THEREFORE ORDERED** that Defendant's Motion to Stay Discovery (ECF
3 No. 19) is **GRANTED**.

4 **IT IS FURTHER ORDERED** that the hearing set for June 4, 2024 at 10:00 AM is
5 **VACATED**.

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7 DATED: May 28, 2024

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9 BREND A WEKSLER
10 UNITED STATES MAGISTRATE JUDGE
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